

# EXHIBIT 6

8/30/2021

CM/ECF-GA Northern District Court

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**U.S. District Court  
Northern District of Georgia (Atlanta)  
CIVIL DOCKET FOR CASE #: 1:14-cv-01577-TWT**

Hill v. The Bank of New York Mellon et al  
Assigned to: Judge Thomas W. Thrash, Jr  
Case in other court: USCA- 11th Circuit, 14-14055-FF  
Cause: 28:1332 Diversity-Petition to Quiet Title

Date Filed: 05/23/2014  
Date Terminated: 04/08/2015  
Jury Demand: Plaintiff  
Nature of Suit: 290 Real Property: Other  
Jurisdiction: Federal Question

**Plaintiff****Janet Hill**

represented by **Janet Hill**  
543 Auburn Ave  
Atlanta, GA 30312  
404-861-6036  
PRO SE

V.

**Defendant**

**The Bank of New York Mellon**  
*as Trustee for the Certificateholders of  
Cwalt, Inc. alternative Loan Trust 2005-58  
Mortgage Pass-Through Certificate Series  
2005-58*  
*TERMINATED: 08/06/2014*  
*formerly known as*  
The Bank of New York  
*TERMINATED: 08/06/2014*

represented by **Jarrold Sean Mendel**  
McGuire Woods LLP-GA  
1230 Peachtree Street, N.E.  
Promenade, Suite 2100  
Atlanta, GA 30309-3534  
404-443-5713  
Fax: 404-443-5687  
Email: [jmendel@mcguirewoods.com](mailto:jmendel@mcguirewoods.com)  
**ATTORNEY TO BE NOTICED**

**Defendant**

**Karen Peetz**  
*President of Bank of New York Mellon*

**Defendant**

**Curtis Y. Arledge**  
*Vice Chairman and CEO Bank of New York  
Mellon*

**Defendant**

**Thomas P. Gibbons**  
*Vice Chairman and Financial Officer Bank  
of New York Mellon*

**Defendant****America's Wholesale Lender**represented by **Jarrold Sean Mendel**

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*TERMINATED: 08/06/2014*

(See above for address)

*ATTORNEY TO BE NOTICED***Defendant****Mortgage Electronic Registration System Inc.***(MERS)**TERMINATED: 08/06/2014*represented by **Jarrood Sean Mendel**

(See above for address)

*ATTORNEY TO BE NOTICED***Defendant****Debbie Nieblas***Assistan Secretary Mortgage Electronic  
Registration System Inc.***Defendant****Shuping, Morse & Ross, LLP***6259 Riverdale Road, Suite 100 Riverdale,  
GA 30274***Defendant****Carlton H. Morse, Jr.***6259 Riverdale Road, Riverdale, GA 30274***Defendant****S. Andrew Shuping, Jr****Defendant****Bayview Loan Servicing***TERMINATED: 08/06/2014*represented by **Jarrood Sean Mendel**

(See above for address)

*ATTORNEY TO BE NOTICED***Defendant****CWMBS, Inc.****Defendant****BAC Home Loans Servicing LP***TERMINATED: 08/06/2014*represented by **Jarrood Sean Mendel**

(See above for address)

*ATTORNEY TO BE NOTICED***Defendant****Countrywide Home Loans Servicing, LP***TERMINATED: 08/06/2014*represented by **Jarrood Sean Mendel**

(See above for address)

*ATTORNEY TO BE NOTICED***Defendant****Bankers Specialty Insurance Company***Individually and on behalf of alternative  
Loan Trust 2005-73C, 2005-J13, 2006-CB,  
2006-8T1, 2007-21CB, CWABS Asset  
Backed Certificates of Trust 2005-11, 2005-  
12, 2005-13, 2005-16, 2006,11 and CWMBS*

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*Mortgage Pass Through Trust 2005-21 and  
2005-58*

**Defendant**

**Bankers Life Insurance Company**

**Defendant**

**Dennis L. Bell**

*President of America's Wholesale Lender*

**Defendant**

**Cathelene Tina Robinson**

*Fulton County Clerk of Court, 136 Pryor  
Street, Atlanta, GA 30303  
TERMINATED: 08/06/2014*

represented by **Diana L. Freeman**

City of Atlanta Law Department  
Suite 5000  
55 Trinity Avenue, S.W.  
Atlanta, GA 30303-3520  
404-546-4160  
Email: dlfreeman@atlantaga.gov  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Brian P. Kemp**

*Georgia, Secretary of State, 2 MLK Jr  
Drive, Suite 313, Floyd West Tower, Atlanta,  
GA 30334  
TERMINATED: 08/06/2014*

represented by **Daniel John Strowe**

State of Georgia Law Department  
40 Capitol Square, S.W.  
Atlanta, GA 30334  
404-656-3338  
Email: dstrowe@jekyllisland.com  
*ATTORNEY TO BE NOTICED*

**Defendant**

**Governor Nathan Deal**

*TERMINATED: 08/06/2014*

represented by **Daniel John Strowe**

(See above for address)  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
05/23/2014	<u>1</u>	COMPLAINT for Quiet Title and Declaratory and Injunctive Relief with Jury Demand filed by Janet Hill. (Filing fee \$400 receipt number 65104) (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Exhibit E, # <u>6</u> Exhibit F, # <u>7</u> Exhibit G, # <u>8</u> Exhibit H, # <u>9</u> Exhibit I, # <u>10</u> Exhibit J, # <u>11</u> Exhibit K, # <u>12</u> Civil Cover Sheet)(dr) Please visit our website at <a href="http://www.gand.uscourts.gov/forms">http://www.gand.uscourts.gov/forms</a> to obtain Pretrial Instructions which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 05/23/2014)
05/23/2014	<u>2</u>	Summons Issued as to America's Wholesale Lender, Curtis Y. Arledge, Bayview Loan Servicing, Thomas P. Gibbons, Brian P. Kemp, Carlton H. Morse, Jr, Mortgage Electronic Registration System Inc., Debbie Nieblas, Karen Peetz, Cathelene Tina Robinson, S. Andrew Shuping, Jr, Shuping, Morse & Ross, LLP, The Bank of New York Mellon. (dr) (Entered: 05/23/2014)
05/27/2014	<u>3</u>	ORDER denying <u>1</u> Motion for a Temporary Restraining Order filed by Janet Hill. Signed by Judge Thomas W. Thrash, Jr on 5/27/14. (dr) (Entered: 05/27/2014)
05/27/2014		Clerks Certificate of Mailing as to Janet Hill re <u>3</u> Order. (dr) (Entered: 05/27/2014)



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05/30/2014	<u>4</u>	Return of Service Executed by Janet Hill. Shuping, Morse & Ross, LLP served on 5/27/2014, answer due 6/17/2014. (dr) (Entered: 06/03/2014)
06/03/2014	<u>5</u>	Summons Issued as to BAC Home Loans Servicing LP, Bankers Specialty Insurance Company, Dennis L. Bell, CWMBS, Inc., Countrywide Home Loans Servicing, LP. (dr) (Entered: 06/04/2014)
06/05/2014	<u>6</u>	Summons Issued as to Nathan Deal. (dr) (Entered: 06/06/2014)
06/13/2014	<u>7</u>	Return of Service Executed by Janet Hill. America's Wholesale Lender served on 6/6/2014, answer due 6/27/2014; Bayview Loan Servicing served on 6/13/2014, answer due 7/7/2014; Countrywide Home Loans Servicing, LP served on 6/13/2014, answer due 7/7/2014; Brian P. Kemp served on 5/30/2014, answer due 6/20/2014; Carlton H. Morse, Jr served on 6/13/2014, answer due 7/7/2014; Mortgage Electronic Registration System Inc. served on 6/13/2014, answer due 7/7/2014; Debbie Nieblas served on 5/30/2014, answer due 6/20/2014; Cathelene Tina Robinson served on 6/13/2014, answer due 7/7/2014; S. Andrew Shuping, Jr served on 6/13/2014, answer due 7/7/2014; The Bank of New York Mellon served on 6/13/2014, answer due 7/7/2014. (dr) (Entered: 06/16/2014)
06/17/2014	<u>8</u>	Return of Service Executed by Janet Hill. Curtis Y. Arledge served on 6/13/2014, answer due 7/7/2014; BAC Home Loans Servicing LP served on 6/16/2014, answer due 7/7/2014; Bankers Specialty Insurance Company served on 6/16/2014, answer due 7/7/2014; Dennis L. Bell served on 6/13/2014, answer due 7/7/2014; CWMBS, Inc. served on 6/13/2014, answer due 7/7/2014; Nathan Deal served on 6/13/2014, answer due 7/7/2014; Thomas P. Gibbons served on 6/13/2014, answer due 7/7/2014; Karen Peetz served on 6/13/2014, answer due 7/7/2014. (dr) (Entered: 06/18/2014)
06/20/2014	<u>9</u>	Limited Appearance and MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , with Brief In Support by Nathan Deal, Brian P. Kemp. (Strowe, Daniel) Modified duplicative text on 6/23/2014 (dr). (Entered: 06/20/2014)
06/23/2014	<u>10</u>	MOTION to Dismiss , MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM with Brief In Support by America's Wholesale Lender, BAC Home Loans Servicing LP, Bayview Loan Servicing, Countrywide Home Loans Servicing, LP, Mortgage Electronic Registration System Inc., The Bank of New York Mellon. (Attachments: # <u>1</u> Brief Memorandum in Support of Motion to Dismiss)(Mendel, Jarrod) (Entered: 06/23/2014)
06/24/2014	<u>11</u>	MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM with Brief In Support by Cathelene Tina Robinson. (Attachments: # <u>1</u> Brief)(Freeman, Diana) (Entered: 06/24/2014)
07/17/2014		Submission of <u>9</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, <u>10</u> MOTION to Dismiss, MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , <u>11</u> MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM , submitted to District Judge Thomas W. Thrash. (dr) (Entered: 07/17/2014)
08/06/2014	<u>12</u>	ORDER granting <u>9</u> Motion to Dismiss for Failure to State a Claim, granting <u>10</u> Motion to Dismiss for Failure to State a Claim, granting <u>11</u> Motion to Dismiss for Failure to State a Claim; terminating Bayview Loan Servicing, Countrywide Home Loans Servicing, LP, Nathan Deal, Brian P. Kemp, Mortgage Electronic Registration System Inc., Cathelene Tina Robinson, The Bank of New York Mellon, America's Wholesale Lender and BAC Home Loans Servicing LP. Signed by Judge Thomas W. Thrash, Jr on 8/6/14. (dr) (Entered: 08/07/2014)
08/07/2014		Clerks Certificate of Mailing as to Janet Hill re <u>12</u> Order. (dr) (Entered: 08/07/2014)
09/03/2014	<u>13</u>	NOTICE OF APPEAL as to <u>12</u> Order on Motion to Dismiss for Failure to State a Claim by Janet Hill. Filing fee \$ 505.00, receipt number GAN100067570. Transcript Order Form

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		due on 9/17/2014. (Attachments: # <u>1</u> USCA Appeal Fees, # <u>2</u> NOA Transmittal Letter) (pjm) (Entered: 09/03/2014)
09/03/2014	<u>14</u>	TRANSCRIPT ORDER FORM (No Hrgs) re: <u>13</u> Notice of Appeal. FRAP 11 Certification due on 9/17/2014. (pjm) (Entered: 09/03/2014)
09/09/2014	<u>15</u>	Transmission of Certified Copy of Notice of Appeal, USCA Appeal Fees, Order and Docket Sheet to US Court of Appeals re: <u>13</u> Notice of Appeal. (pjm) (Entered: 09/09/2014)
09/11/2014	<u>16</u>	USCA Acknowledgment of <u>13</u> Notice of Appeal, filed by Janet Hill. Case Appealed to USCA- 11th Circuit. Case Number 14-14055-FF. (pjm) (Entered: 09/11/2014)
09/11/2014		Pursuant to F.R.A.P.11(c), the Clerk certifies that the record is complete for purposes of this appeal, <u>13</u> Notice of Appeal. Case Appealed to USCA- 11th Circuit. Case Number 14-14055-FF. The entire record on appeal is available electronically. (pjm) (Entered: 09/11/2014)
10/29/2014	<u>17</u>	ENTRY OF DISMISSAL of USCA DISMISSING <u>13</u> Notice of Appeal, filed by Janet Hill for want of prosecution because the Appellant failed to file and appendix within the time fixed by the rules. Case Appealed to USCA- 11th Circuit. Case Number 14-14055-FF. (pjm) (Entered: 10/29/2014)
04/08/2015	<u>18</u>	ORDER that the complaint is DISMISSED pursuant to Local Rule 41.3A(3). Signed by Judge Thomas W. Thrash, Jr on 4/7/15. (dr) (Entered: 04/08/2015)
04/08/2015	<u>19</u>	CLERK'S JUDGMENT dismissing case. (dr)--Please refer to <a href="http://www.call.uscourts.gov">http://www.call.uscourts.gov</a> to obtain an appeals jurisdiction checklist-- (Entered: 04/08/2015)
04/08/2015		Clerks Certificate of Mailing as to Janet Hill re <u>18</u> Order to Dismiss, <u>19</u> Clerk's Judgment. (dr) (Entered: 04/08/2015)
04/08/2015		Civil Case Terminated. (dr) (Entered: 04/08/2015)

ORIGINAL

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF ATLANTA

JANET HILL,

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON FKA THE  
BANK OF NEW YORK AS TRUSTEE FOR THE,  
CERTIFICATEHOLDERS OF CWALT, INC  
ALTERNATIVE LOAN TRUST 2005-58  
MORTGAGE PASS-THROUGH CERTIFICATE  
SERIES 2005-58

AND

KAREN PEETZ, PRESIDENT OF BANK OF  
NEW YORK MELLON

AND

CURTIS Y. ARLEDGE, VICE CHAIRMAN AND  
CEO BANK OF NEW YORK MELLON

AND

THOMAS P. GIBBONS, VICE CHAIRMAN AND  
FINANCIAL OFFICER BANK OF NEW YORK  
MELLON

AND

AMERICA'S WHOLESALE LENDER

Case No.:

FILED IN CLERK'S OFFICE  
U.S.D.C. - Atlanta

MAY 23 2014

JAMES M. HENRY, Clerk  
By: *James M. Henry*  
Deputy Clerk

TWT

1:14-CV-1577

COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF

1 AND

2 MORTGAGE ELECTRONIC REGISTRATION

3 SYSTEM INC (MERS)

4 AND

5 DEBBIE NIEBLAS, ASSISTANT SECRETARY

6 MORTGAGE ELECTRONIC REGISTRATION

7 SYSTEMS INC

8 AND

9 SHUPING, MORSE & ROSS, LLP

10 6259 RIVERDALE ROAD, SUITE 100

11 RIVERDALE, GA 30274

12 AND

13 CARLTON H. MORSE JR.

14 6259 RIVERDALE ROAD

15 RIVERDALE, GA 30274

16 AND

17 S. ANDREW SHUPING JR.

18 AND

19 BAYVIEW LOAN SERVICING

20 AND

21 CWMBS, INC.

22 AND

23 BAC HOME LOANS SERVICING LP

24 AND

25  
26 COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF

1 COUNTRYWIDE HOME LOANS  
2 SERVICING, LP

3 AND

4 BANKERS SPECIALTY INSURANCE  
5 COMPANY INDIVIDUALLY AND ON  
6 BEHALF OF ALTERNATIVE LOAN  
7 TRUST 2005-73CB, 2005-J13, 2006-CB,  
8 2006-8T1, 2007-21CB, CWABS ASSET-  
9 BACKED CERTIFICATES OF TRUST  
10 2005-11, 2005-12, 2005-13, 2005-16, 2006,  
11 11, AND CWMBS MORTGAGE PASS  
12 THROUGH TRUST 2005-21 AND 2005-  
13 58

14 AND

15 BANKERS LIFE INSURANCE

16 COMPANY

17 AND

18 DENNIS L. BELL, PRESIDENT OF

19 AMERICA'S WHOLESALE LENDER

20 AND

21 FULTON COUNTY CLERK OF COURT

22 CATHELENE TINA ROBINSON'S 136

23 PRYOR STREET ATLANTA, GA 30303

24 AND

25 BRIAN P. KEMP

26 GEORGIA, SECRETARY OF STATE

COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF



2 MLK JR DRIVE SUITE 313 FLOYD  
WEST TOWER  
ATLANTA, GA 30334  
AND  
GOVERNOR NATHAN DEAL

Defendants

**COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF**

“What idiots, what kind of idiots are running SHUPING, MORSE & ROSS, LLP and who are they? They violated the Fair Debt Collection Practices Act by stating that they are SHUPING, MORSE & ROSS, LLP, but listed as BROCK & SCOTT. They are not listed with The Georgia Secretary of State Office, but are Debt Collectors in the state of Georgia.

Plaintiff, Janet Hill, pro se and for her Complaint make the following allegations upon information and belief based upon all of the facts set forth herein which were obtained through an investigation made by and through Plaintiff, The Securities and Exchange Commission. This action arises from Defendants’ misrepresentation and deliberate concealment of material facts concerning America’s Wholesale Lender and Countrywide’s mortgage underwriting practices, quality of its loan to Plaintiff. Plaintiff relied upon Defendants’ materially misleading statements in purchasing her loan from America’s Wholesale Lender. Plaintiff’s investigation has included, among other things a review of filings by Defendants with the United States Securities and Exchange Commission (“SEC”), press releases and other Federal Court Cases issued by Defendants and other sources set forth below. Plaintiff

**COMPLAINT FOR QUIET TITLE AND  
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believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**DEFENDANTS PURSUED A RECKLESS STRATEGY TO INCREASE THE  
THE COMPANY'S MARKET SHARE AND TO EARN ELEVATED FEES**

**I. NATURE OF THE ACTION**

1. Plaintiff bring this Quiet Title Action, pursuant to the Federal Civil False Claims Act, 31 U.S.C. § 3729 (the "FCA"), Plaintiff seeks to recover, damages and civil penalties arising for the sale by Defendants of MBS, and other forms of asset-backed securities using funds provided by the United States ("U.S.") government. Plaintiff conducted her own investigations in furtherance of a False Claims Act qui tam action and found that the Defendants pursued and continue to pursue foreclosure actions against her using false and fabricated documents, particularly mortgage assignments.
2. Defendant's hands are dirty and they have no standing and are not the real party interest to the loan they are trying to foreclosure upon on June 02, 2014.
3. They have made false statement of fact in recorded loan documents (notes and deeds of trust) and this can be easily verified by looking at the documents subject to Plaintiffs Complaint.

**COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF**

- 1 4. Each of the documents that have attachments including notes and deeds of  
2 trust falsely recite that "AMERICAS WHOLESALE LENDER" is a  
3 "CORPORATION" that is "ORGANIZED AND EXISTING UNDER NEW  
4 YORK LAW." This is completely false and was designed to strip away any  
5 legal recourse on the Plaintiff's loan.  
6  
7 5. A fictitious business name has no authority to contract where its purpose is to  
8 defraud. As such, they have no interest in the loan at bar. In fact, it must be  
9 noted that they do not allege they are the legal owners of the loan that they  
10 are illegally trying to foreclosure on.  
11

12  
13  
14 **II. PARTIES, JURISDICTION AND VENUE**

- 15 6. The Court has jurisdiction over the subject matter of this action pursuant to  
16 28 U.S.C. §§ 1331 and 31 U.S.C. § 3732 and Section 27 of the Exchange Act,  
17 15 U.S.C. § 78aa.  
18  
19 7. In connection with the acts, transactions, and conduct alleged in this  
20 Complaint, Defendants, directly or indirectly, used the means and  
21 instrumentalities of interstate commerce, including but not limited to the  
22 United States mails, and interstate telephone communications.  
23  
24 8. This Court has personal jurisdiction over the Defendants pursuant to subject  
25 matter jurisdiction over this action pursuant to 31 U.S.C. § 3732(a) because  
26

**COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF**



1 Defendants transact the business that is the subject matter of this lawsuit in  
2 the District of Atlanta Georgia and numerous acts proscribed by 31 U.S.C. §  
3 3729 occurred in the District of Georgia.  
4

5 9. Venue is proper in this District pursuant to 31 U.S.C. § 3732(a) because  
6 Defendants transact the business that is the subject matter of this lawsuit in  
7 the District of Georgia and numerous acts proscribed by 31 U.S.C. § 3729  
8 occurred in the District of Georgia. Certain non-fraud related claims asserted  
9 herein arise under Sections 11, 12(s)(2) and 15 of the Securities Act, 15 U.S.C.  
10 §§ 77k, 77(a)(2) and 77o.  
11

12 10. Janet Hill, ("Plaintiff") is a Georgia resident residing at 543 Auburn Avenue  
13 Atlanta, GA 30312 ("subject property").  
14

15 11. Defendant Secretary of State Brian Kemp is the Secretary of State for the  
16 State of Georgia. He failed to check the status of America Wholesale Lenders  
17 and allowed them to continue to file false documents into the Georgia Courts.  
18

19 12. Defendant Cathelene Tina Robinson, is the Clerk of Superior Court for the  
20 County of Fulton, where Plaintiff's property is located. Defendant Robinson  
21 failed to check the status of America Wholesale Lenders, failed to protect the  
22 Plaintiff, and allowed America Wholesale Lenders, to file fraudulent document  
23 into the Superior Court without proper documentation, causing harm to  
24 Plaintiff.  
25

26  
COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF

1 13. Defendant The Bank of New York Mellon fka The Bank of New York, As  
2 Trustee for the Certificate Holders of CWALT is a limited purpose national  
3 banking association, also known as a national trust company. Defendant in  
4 this matter, is a passive Real Estate Mortgage Investment Conduit ("REMIC")  
5 trust created for purpose of issuing mortgage-backed pass-through securities,  
6 known as certificates, REMIC TRUSTS ARE REQUIRED TO REMAIN  
7 PASSIVE IN ORDER TO COMPLY WITH TAX RULES GIVING THEM TAX-  
8 FREE STATUS. REMIC Trusts are a type of specially created, single-purpose  
9 vehicle ("SPV"). While the REMIC must be passive, bills must be sent and  
10 payments collected, and so a third party "master servicer" is brought in to  
11 manage the loans. The servicer collects payments on the loans and "passes  
12 through the proceeds to the certificate holders without the trust ever touching  
13 the funds. BONY's corporate headquarters is located at One Wall Street, New  
14 York, New York.

15  
16 14. Defendant America's Wholesale Lender (hereinafter referred to as "Lender") is  
17 an inactive New York Corporation registered on or about December 16, 2008,  
18 with its principal place of business located at 875 Avenue of the Americas,  
19 Suite 105, New York, NY 10001.  
20  
21  
22  
23  
24  
25  
26

1 15. Defendant Dennis L. Bell ("Bell") is a resident of Kentucky and purports to be  
2 the president of AWLI. Bell does business and conducts fraudulent activities  
3 in Georgia.  
4

5 16. Defendant Cheri B. English is a resident of Kentucky and purports to be an  
6 Executive Vice President of America's Wholesale Lender. English does  
7 business and conducts fraudulent activities in Georgia.  
8

9 17. Jan Van Eck is a resident of Connecticut and purports to be a Vice President  
10 of AWLI.

11 18. Defendant BAC Home Loans Servicing, LP, is an Agent and subsidiary of the  
12 Defendant Bank of America and is a debt collector as defined by 15 U.S.C. §  
13 1692 and is a mortgage loan servicer with its principal place of business at  
14 4500 Park Granada, in Calabasas, California 91302.  
15

16 19. Defendant Bank of America ("BOA") is a banking corporation and Parent of  
17 BAC Home Loans Servicing, LP, with a principal office at 100 North Tryon  
18 Street, Charlotte, North Carolina.  
19

20 20. Defendant Bank of New York Mellon is a banking corporation, and purports to  
21 be the holder-in-due-course and Trustee for Certificate holders CWABS, Inc,  
22 Asset-Backed Securities #2005-58 and is a "debt collector" as defined by 15  
23 U.S.C. § 1692 with a principal place of business at 101 Barclay St., New York  
24 New York 10286.  
25

26  
COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF

1 21. Defendant Mortgage Electronic Registration Systems, Inc., MERSCORP

2 (hereinafter referred to as "MERS") is a Delaware corporation with a principal  
3 place of business at 1818 Library Street, Reston, VA 20190 and does business  
4 in the State of Georgia.  
5

6 22. Defendant Andrew Shuping, Jr., ("Attorney") is a "debt collector" as defined by  
7 15 U.S.C. § 1692 whose principal address is 6259 Riverdale Road, Riverdale  
8 Georgia 30274  
9

10 23. Defendant SHUPING, MORSE & ROSS is a "debt collector" Law firm as  
11 defined by the Fair Debt Collection Practices Act (FDCPA) and that their  
12 letter/Presentments of April and June 2014, mailed to Plaintiff's home  
13 violated the FDCPA whose principal address is 6259 Riverdale Road,  
14 Riverdale Georgia 30274.  
15

16 24. Defendant Karen Peetz, serves as President of Bank of New York Mellon,

17 25. Curtis Y. Arledge, serves as Vice Chairman and CEO of Bank of New York  
18 Mellon.  
19

20 26. Defendant Thomas P. Gibbons, Vice Chairman and Financial Officer of Bank  
21 of New York Mellon.  
22

23 27. The amount in controversy exceeds \$75,000.

24 28. This action is brought under the Federal False Claims Act, Quiet Title under  
25 Georgia laws.  
26

COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF



1 37. Once Plaintiff's loan was securitized and converted, it forever lost its security.

2 38. Since the loan was sold and securitized into stock, the lender can no longer  
3 claim that it is a real party in interest, or even that the loan stills exists as a  
4 loan, since double dipping is a form of securities fraud.  
5

6 39. A negotiable instrument can only be in one of two states after undergoing  
7 securitization, not both at the same time. It can either be a loan or a stock.  
8

9 40. Once the instrument is traded as a stock, it is forever a stock and therefore  
10 regulated, as this loan was, by the SEC as a stock.

11 41. The subject Mortgage states that the Mortgage secures the Promissory Note.

12 42. The Promissory Note, by conversion into stock, was extinguished as a  
13 collateralized asset and therefore the Trust secures absolutely nothing and the  
14 Bank of New York-Mellon, not being the real party in interest, has not  
15 STANDING to foreclose on Plaintiff.  
16

17 43. Since the Lender sold the loan to a REMIC, it forever lost the ability to  
18 enforce, control or otherwise foreclose on Plaintiff's property, including the  
19 right to assign the Mortgage or endorse the Note. It was no longer the real  
20 party of interest.  
21

22 44. If the Bank of New York-Mellon owned the Note, it would have to be taxed on  
23 the interest earned from the Note. If the REMIC owned the Note it would  
24 have a tax liability.  
25

26  
COMPLAINT FOR QUIET TITLE AND  
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1 45. To avoid double taxation, under Internal Revenue Code 860, the loan was put  
2 into a SPV so that only the shareholders are taxed and therefore are the real  
3 parties in interest.  
4

5 46. Because of IRS code 860, the Bank of New York-Mellon/Trustee is not the real  
6 and beneficial party in interest because the REMIC does not own the Note,  
7 the shareholders do.  
8

9 47. By distributing the tax liabilities to the shareholders, the REMIC has also  
10 distributed the parties in interest.

11 48. Since a Promissory Note is only enforceable in its whole entirety and  
12 thousands of shareholders own the subject Note, no one of them can foreclose  
13 on Plaintiff's home.  
14

15 49. The asset of the REMIC was registered and traded as a part of a security and  
16 as such cannot be traded out and is permanently attached and converted into  
17 stock preventing the Note from being assigned and securitized again and  
18 again which would create securities fraud.  
19

20 50. Since Plaintiff's loan went into default, it was written off by the REMIC and  
21 received tax credits from the IRS, was therefore discharged, and settled  
22 destroying the Note forever.  
23

24 51. After securitization, the Note cannot be re-attached to the Plaintiff Mortgage  
25 through adhesion.  
26

COMPLAINT FOR QUIET TITLE AND  
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1 52. Under the UCC, the Promissory Note is a one-of-a-kind instrument and any  
2 assignment must be as a permanent fixture onto the original Note much like a  
3 check.  
4

5 53. There is no endorsement on the original Note.

6 54. The Original Promissory Note has the only legally binding chain of title,  
7 otherwise the instrument is faulty.  
8

9 55. The original Note had to be destroyed upon securitization because the Note  
10 and the Stock cannot exist at the same time.

11 56. All Defendants lack standing to enforce the Note.

12 57. Under the terms of the Pooling and Servicing Agreement of BAC Home Loans  
13 Servicing, LP the servicer can buy back the Note as a non-performing non-  
14 secured debt like collection agencies that buy non-performing credit card  
15 debts.  
16

17 58. This purchase is of a discharged asset and cannot be re-adhered to the original  
18 Mortgage, since the original Note was a one-of-a-kind instrument, not part of  
19 the discharge asset.  
20

21 59. Therefore the purchaser of the discharged asset can never be the holder-in-  
22 due-course of the original Note.  
23

24 60. The numerous attempts by Defendants MERS, Bank of New York-Mellon and  
25 BAC to claim ownership of the original Note by the purchaser of the  
26

COMPLAINT FOR QUIET TITLE AND  
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1 discharged asset is FRAUDULENT and is characterized as “reverse  
2 engineering.”

3  
4 61. There is no perfection of title.

5 62. Plaintiff never executed a note naming MERS as a party, nor was Plaintiff  
6 ever notified or informed of a transfer of the note to MERS.

7 63. No evidence exist to support the claim that MERS is or was ever was the  
8 holder in due course of the Note at issue in this action.

9  
10 64. MERS, listed on the Mortgage as the “nominee” or agent, and as the one-time  
11 purported holder of the Note, by and through its membership rules, was not  
12 empowered to act as an agent or nominee for its members, and was without  
13 specific written approval from both principals and lacked the mandate to  
14 effectuate mortgage-related assignments, transfers or appointments of any  
15 kind.  
16

17 65. There is no evidence to suggest that during the relevant time periods  
18 contemplated in this Action, MERS was empowered by both principals to  
19 effectuate any mortgage-related assignment, transfer or appointment.  
20

21 66. Plaintiff were never informed or notified of any transfer of the Note to  
22 Defendant Bank of New York-Mellon.

23  
24 67. The Mortgage states that only the Lender can make an assignment.  
25  
26

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1 68. No evidence exists to support the claim that the Bank of New York-Mellon is  
2 the holder in due course of the Note at issue in this action.

3 69. Plaintiff's mortgage was flawed from the date of origination of the loan  
4 because America's Wholesale Lender did not really exist, was unregistered  
5 and unlicensed to conduct mortgage lending or any other type of business in  
6 the State of Georgia and has been and continues to knowingly, intentionally,  
7 illegally and fraudulently record mortgages and conduct business in Georgia  
8 on a large scale and systematic fashion. . MERS was named as the  
9 beneficiary and nominee of the lender of the Mortgage, which was done for the  
10 purposes of deception, fraud, confusing – and therefore harming – the  
11 Plaintiff, and theft of revenue from the local county government through the  
12 illegal avoidance of mortgage fees. MERS is unregistered and unlicensed to  
13 conduct mortgage lending or any other type of business in the State of Georgia  
14 and has been and continues to knowingly, intentionally, illegally and  
15 fraudulently record mortgages and conduct business in Georgia on a large  
16 scale.

17 70. Neither MERS nor Bank of New York-Mellon is the original lender for the  
18 Plaintiff's subject Mortgage or Note herein.  
19  
20  
21  
22  
23  
24  
25  
26

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1 71. In 2014, MERS attempted to be a party in standing during a foreclosure  
2 action against Plaintiff and purported to make an assignment to the  
3 Defendant Trustee Bank of New York Mellon. Exhibit "B".  
4

5 72. Neither MERS nor Bank of New York-Mellon are legally documented  
6 assignees of either the Plaintiff's Mortgage or Note and do not hold the  
7 original Mortgage nor have they ever held the Plaintiff's Note.  
8

9 73. No Note or other evidence exists which could ever make the Plaintiff indebted  
10 to MERS or Bank of New York-Mellon in any way.

11 74. Neither MERS nor Bank of New York-Mellon ever had nor will they ever have  
12 the authority to assign the Mortgage to any entity.  
13

14 75. Neither MERS nor Bank of New York-Mellon ever had any right to collect on  
15 the Note or enforce the Mortgage, nor have they ever had a right to hold,  
16 enforce or collect upon Plaintiff's Note.

17 76. At the time Plaintiff signed the Note and Mortgage, he was unknowingly  
18 converting her property into an asset of a MBS and was deliberately induced  
19 into signing a Negotiable Instrument, which was never intended as such, but  
20 was intended as collateral for a MBS.  
21

22 77. The alleged Note in question started its life as a negotiable instrument,  
23 similar to a check. The negotiation and enforceability of the Note is governed  
24 by Article Three (3) of the Uniform Commercial Code.  
25

26  
COMPLAINT FOR QUIET TITLE AND  
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1 78. Plaintiff's Note was unduly confusing and written in such a manner as to  
2 confuse Plaintiff and for the purpose of drawing Plaintiff into a default.

3 79. To help in the purchase and subsequent re-financing of the subject property,  
4 Plaintiff executed a promissory note ("Mortgage Note" or "Note") in favor of  
5 America's Wholesale Lender. (Exhibit "A"). In fact, the trademark/service  
6 mark "AMERICS WHOLESale LENDER" only has meaning or significance  
7 as used in conjunction with Countrywide and its wholesale lending division.  
8 As such, the two (Countrywide and its trademark/service mark "Americas  
9 Wholesale Lender") are virtually intertwined and have no meaning apart from  
10 each other.  
11  
12

13 80. As security for the Note, Plaintiffs executed a mortgage agreement in favor of  
14 America's Wholesale Lenders as Lender and Mortgage Electronic Registration  
15 Systems, Inc (MERS) as mortgagee/nominee for Lender. See Exhibit (A).  
16

17 81. On or about June 03, 2011, MERS executed an Assignment of Mortgage form  
18 assignor MERS acting as nominee to America's Wholesale Lender to assignee,  
19 Defendant The Bank of New York Mellon FKA The Bank of New York, as  
20 trustee for the Certificate holders of CWALT, Inc. (Exhibit 2). The  
21 assignment was executed in Los Angeles County California by Debbie Nieblas,  
22 Assistant Secretary for Mortgage Electronic Registration Systems, Inc.  
23  
24  
25  
26

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1 82. On or about April, 2014, The Bank of New York Mellon, began foreclosure by  
2 advertisement using the foreclosure firm SHUPING, MORSE & ROSS  
3 (Notices attached as (Exhibit 3). The home is due to be sold on June 02, 2014  
4 by SHUPING, MORSE & ROSS.  
5

6 83. Plaintiff's loan falsely state that: "Americas Wholesale Lender" is a  
7 CORPORATION" that is Organized and Existing Under The Laws of New  
8 York" when in fact that is simply not true, and has never been true.  
9

10 84. Plaintiff's false statement is a violation of the false claims Act.

11 73. Defendants have recorded an interest in Plaintiffs' Property or claim some  
12 interest in Plaintiffs' Property.  
13

14 74. Paragraph 1 of the Plaintiffs' Adjustable Rate Note states in pertinent part: 'I  
15 understand that the Lender may transfer this Note. Lender or anyone who takes  
16 this Note by transfer and *who is entitled to receive payments under this Note is*  
17 *called the "Note Holder."*  
18

19 75. U.C.C. § 3-110 (c) stipulates *how* a negotiable instrument may identify the  
20 person to who it is made payable. In pertinent part, this statute states: (c) A person  
21 to whom an instrument is payable may be identified *in any way*, including by name,  
22 identifying number, office or account number  
23

24 76. In the vernacular of the Uniform Commercial Code, Petitioners' note has been  
25 made payable to the *person entitled to receive* Plaintiffs' payments.  
26

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1 77. Paragraph 7 (c) of Petitioners' Note states in pertinent part: (C) Notice of  
2 Default "If I am in default, the *Note Holder may send me a written notice* telling  
3 me that if I do not pay the overdue amount by a certain date, *the Note Holder may*  
4 *require me to pay immediately the full amount of Principal* which has not been  
5 paid and all the interest that I owe on that amount...."

7 78. The substantive law governing enforcement of a negotiable instrument is set  
8 forth in U.C.S. 3-301 and states in pertinent part: "Person entitled to enforce an  
9 instrument means (i) the holder of the instrument, (ii) a nonholder in possession of  
10 the instrument who has the rights of a holder...."

12 79. Paragraph 1 of Petitioners' Note declares "who takes this Note by transfer and  
13 who is entitled to receive payments under this Note is called the *Note Holder*. By  
14 stipulating that the Note Holder is the person entitled to Plaintiff's payment, this  
15 paragraph rejects part (i) of U.C.C. 3-301 and adopts instead part (ii), *a nonholder*  
16 *who has the rights of a holder*.

18 80. Paragraph 7 (C) stipulates that only the Note Holder can send out a Notice of  
19 Default. Paragraphs 1 and 7 (C) of Petitioners Note reserve enforcement  
20 exclusively to the person [or persons] entitled to receive Petitioners' payment. This  
21 person is the *Note Holder*. These terms are embedded as indelibly into the  
22 foundation document of this transaction as are the names of the parties and the  
23 amount being loaned.  
24  
25  
26

COMPLAINT FOR QUIET TITLE AND  
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1 81.Previous Quiet Title: The unambiguous meaning of Paragraphs 1 and 7 (C) of  
2 Plaintiffs' Note state that only the party entitled to Plaintiffs' payments can be  
3 the *Note Holder* and successor in interest to the Lender. From this factually  
4 incontrovertible premise, this legal corollary is self-evident. Since the *Note Holder*  
5 is the only party that can initiate a foreclosure proceeding, this act of enforcement  
6 can only be performed by the person [or persons] that are entitled to receive  
7 Plaintiffs' payments.  
8

9  
10 82. The first paragraph of Petitioners Note names the person entitled to payments  
11 as the *beneficiary*. This same person is authorized to exercise the *power to sell*  
12 *clause* in a Security Deed in Georgia. The only person who can exercise the power  
13 to sell clause in Georgia's non-judicial foreclosure statute is the party entitled to  
14 the borrower's payments.  
15

16 83. For reason which will become apparent after examining documents from the  
17 Securities and Exchange Commission search engine, the *person entitled to enforce*  
18 Petitioners' Note within the meaning of U.C.C. 3-301 (ii) is in fact a group of people.  
19 The parties entitled to Plaintiffs' payments are current holders of mortgage-backed  
20 certificates owning a pro rata share of Plaintiffs' Note. Self- authenticating  
21 documents filed with the Securities and Exchange Commission declare this group  
22 to be the owners of these Notes *for all purposes whatsoever*.  
23  
24  
25  
26

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1 84. Mortgage Electronic Registration Systems (MERS) is described as a *nominee*  
2 for America's Wholesale Lender, and its successors in interest. Although the  
3 Security Deed establishes MERS as the beneficiary, by its own self-imposed  
4 admission, MERS *is not* making any contribution worthy of this designation.  
5 Paragraph 2 of MERS's *Terms and Conditions* states in pertinent part: "2. The  
6 Member, at its own expense, shall promptly, or as soon as practicable, cause MERS  
7 to appear in the appropriate public records as the mortgagee of record with respect  
8 to each mortgage loan that the Member registers on the MERS System. MERS  
9 shall serve as mortgagee of record with respect to all such mortgage loans solely as  
10 a nominee, in an administrative capacity, for the beneficial owner or owners thereof  
11 from time to time. MERS shall have no rights whatsoever to any payments made  
12 on account of such mortgage loans, to any servicing rights related to such mortgage  
13 loans, or to any mortgaged properties securing such mortgage loans. MERS agrees  
14 not to assert any rights (other than rights specified in the Governing Documents)  
15 with respect to such mortgage loans or mortgaged properties. References herein to  
16 "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and  
17 beneficiary under a deed of trust and any other form of security instrument under  
18 applicable state law.  
19

20 85. MERS is not a vehicle for creating and transferring beneficial interests.  
21  
22  
23  
24  
25  
26

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1 Paragraph 6. MERS and the Member agree that: (i) *the MERS System*  
2 *is not a vehicle for creating or transferring beneficial interests in mortgage loans*, (ii)  
3 transfers of servicing interests reflected on the MERS System are subject to the  
4 consent of the beneficial owner of the mortgage loans, and (iii) membership in MERS  
5 or use of the MERS System shall not modify or supersede any agreement between or  
6 among the Members having interests in mortgage loans registered on the MERS  
7 System.  
8

9 86. MERS has ruled out any entitlement to Petitioners payments. This  
10 also means that MERS cannot qualify as the *Note Holder* under paragraph 1 of  
11 Petitioners' Note.  
12

13 87. The inability of MERS to hold any interest greater than just legal  
14 title, which is no ownership interest whatsoever, is also affirmed in its *Terms and*  
15 *Conditions*. See paragraph 6 of MERS Terms and Conditions.  
16

17 88. Under this Security Deed, the powers of the Lender are pervasive.  
18 This is declared in the Transfer of Rights in Property clause.

19 89. In pertinent part, the Transfer of Rights paragraph secures to  
20 Lender: The repayment of the Loan and (ii) performance of Borrower's covenants  
21 under this security instrument. Under Acceleration, Remedies, only the Lender at its  
22 option can invoke the power of sale and pursue foreclosure. No other party but the  
23 Lender or their successor in interest is allowed to exercise this authority.  
24  
25  
26

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1           90. Under well settled property law concepts, only a party with an  
2 ownership interest in the note can enforce the security deed. The Restatement (Third)  
3 of Property, Mortgages § 5-4(c) states, “a mortgage may be enforced only by, or on  
4 behalf of, a person who is entitled to enforce the obligation the mortgage secures.” A  
5 mortgage servicer and MERS have no ownership interest in the note.  
6

7           91. After Petitioners loan was made, this Note and Security Deed was  
8 subjected to a series of transfers and a succession of new beneficial owners. The  
9 purpose served by these transfers was to convert these debt instruments into a debt  
10 commodity suitable for serving as collateral for newly issued mortgage-backed  
11 securities. Petitioners’ Note and Security Deed became part of a pool of mortgage for  
12 a secured transaction listed on the Securities and Exchange Commission’s EDGAR  
13 search engine.  
14

15           92. After these sales, Petitioners’ Security Deed was bundled and sold to  
16 a trust [hereinafter referred to as the Trust]. The transfer of security deeds and  
17 mortgages to this Trust is documented in the Trust Agreement. A special purpose  
18 vehicle used by the Trust for bundling and transferring mortgages is the Depositor of  
19 loans.  
20

21           93. After assigning all of its right, title and interest to Petitioners’ Note  
22 and Security Deed to this Trust, could no longer claim any entitlement to Petitioners’  
23 payments. When the Trust lost its entitlement to these payments, it relinquished as  
24  
25  
26

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1 well its right to be called the *Note Holder* on Petitioners Note and to be called the  
2 *Lender* on Petitioners' Security Deed.

3  
4 94. This Trust acts as an apparatus for converting mortgages into a debt  
5 commodity. Each mortgage has now been transferred to The Bank of New York as  
6 Trustee for the Certificateholders CWALT, Inc. Alternative Loan Trust 2005-58  
7 Mortgage Pass-Through Certificates are issued to this Trust and bonded to a pool of  
8 mortgages. When this is complete, mortgage-backed securities and their assigned  
9 pool of instruments become inseparable. This transformation is documented in the  
10 Trust Agreement.

11  
12 95. This Trust is authorized to issue *pass-through securities* pursuant  
13 to 26 U.S.C. §§ 671 to 670 for the Internal Revenue Service grantor trust rules. In a  
14 *Persons Deemed Owners* clause, the Certificate holders or investors, own the  
15 beneficial interest in these instruments. The *Persons Deemed Owners* clause appears  
16 in every *pass-through securities* offering. This pass-through feature enables the trust  
17 to be tax exempt, since it owns nothing.

18  
19 96. Statements made in a filing for the Securities and Exchange  
20 Commission are subject to the heightened standard imposed by the Sarbanes-Oxley  
21 Act of 2002. This Act makes signatories accountable for the accuracy of all  
22 information disclosed and subject to penalties ranging from being delisting to  
23 multimillion dollar fines and imprisonment. This statement in the *Persons Deemed*  
24 *Owners* clause also runs against the interest of the maker. Statements running  
25

26  
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1 against the interest of the maker are extremely difficult to overcome. The guilty plea  
2 aspect of this statement, coupled with its presence in a filing before the Securities  
3 and Exchange Commission, makes this statement worth of belief.

4  
5 97. This *Persons Deemed Owners* clause closes the loop opened in the  
6 first paragraph of Petitioners' Note by identifying the persons entitled to receive  
7 Plaintiff's payments. Holders of mortgage-backed certificates owning a fractional  
8 share of Petitioners' note are entitled to these payments. Under grantor trust rules  
9 of the IRS for pass-through securities, money generated by assets held in this Trust  
10 estate can only be paid to these owners; and this arrangement cannot be altered.

11  
12 98. Because of their fractional ownership interests in Petitioners' Note  
13 and Security Deed, privity of contract is established between these note holders i.e.  
14 investors and Petitioner. This new alignment is permanent. It cannot be disturbed.

15  
16 99. Certificate holders, i.e. investors, hold the only financial stake in  
17 Petitioners' Note. They are the only parties benefitted or injured by the outcome.

18  
19 100. Since holders of mortgage-backed securities are permanently  
20 entitled to Plaintiff's payments, these parties are also identified under the Uniform  
21 Commercial Code as the *Note Holder*. Pursuant to U.C.C. 3-110 (c), Plaintiff's Note  
22 is payable to these investors and no one else. In accord with U.C.C. 3-301 (ii), only  
23 investors can initiate an enforcement action.

24  
25 101. Previous Quiet Title: Paragraph 22 of Petitioners' Security Deed  
26 states that the *Lender, at its option* may accelerate payment. Current holders of

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1 mortgage-backed securities owning a pro rata share of Plaintiffs' Note and Security  
2 Deed are exclusively entitled to enforce this instrument. These investors are the  
3 Lender's successor in interest.

4  
5 102. Under the terms of the Note and Security Deed, the only parties  
6 entitled to issue a Notice of Default and require accelerated payments are holders of  
7 mortgage-backed certificates owning fractional shares of Plaintiffs' Note, collectively  
8 exceeding a majority of the ownership interests outstanding.

9  
10 103. Holders of mortgage-backed certificates owning pro rata shares of  
11 Plaintiffs' loan are not disclosed at the Fulton County Recorder's Office. There is no  
12 document on file at the Recorder's Office attesting to the fact that these beneficial  
13 owners authorized anyone to act on their behalf. The Lender's true successor in  
14 interest and the *real party in interest* at this time, has been excluded from the one  
15 place where all ownership interests must necessarily be reflected.

16  
17 104. Mortgage backed certificates will not be issued in the name of each  
18 investor. Instead, Certificates are sent to a *Depository Trust*. Depository Trust  
19 provides centralized administrative services for funding sources and their recipients.  
20 Its mission is to route and connect a source of funds to each recipient. Depository  
21 Trust also has a pseudonym called Cede & Co.

22  
23 105. Every mortgage-backed certificate will reflect the pseudonym as  
24 owner of record instead of these investors. Depository Trust is no just the passive  
25 recipient of mortgage-backed securities. Depository Trust is inserted between the



1 Trustee Bank and the investors. It acts as the investors' authorized representative,  
2 empowered to speak on behalf of all Certificate holders. Depository Trust can act as  
3 the authorized representative for investors.

4  
5 106. The rights of investors which can be exercised are restricted to just  
6 the rules and agreements of Depository Trust.

7 107. Investor names are not on ownership records. Investors are  
8 subordinated to a company that can be counted upon to behave in a submissive and  
9 accommodating manner. They have no right to communicate with anyone but  
10 Depository Trust, and then they may discuss rules relating to Depository Trust.  
11 Investors are systematically and methodically ostracized from playing any role  
12 whatsoever in mortgage backed transactions. Investors are not even allowed to  
13 discover what is taking place. There is no functioning lender.

14  
15 108. The Trust Agreement provides that the Trustee is to protect present  
16 and future Certificate-holders welfare. A framework has been established blocking  
17 all access and communication lines between investors and the Indenture Trustee. The  
18 legal principal is that specific contract terms always trump general contract terms.  
19 The following specific terms overrule these ambiguous and general terms of  
20 protection.

21  
22 109. The Trustee has blanket immunity from all risk and no  
23 accountability for protecting the interest of Certificateholders.

24  
25 110. The Trustee will incur no liability or obligation toward any investor.

26  
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1           111. Granting the Trustee Bank immunity from risk of loss and  
2 rendering them harmless from incurring any liability, obligation or duty toward an  
3 investor undermines any pretense of an agency or fiduciary relationship. The agent  
4 must take responsibility for the principal's welfare, particularly when this principal  
5 has been rendered defenseless by barriers erected around them. Equally as important,  
6 no such relationship is established at the local recorder's office with investors.  
7

8           112. MERS assigned its interest to The Bank of New York as Trustee  
9 for the Certificateholders of CWALT, Inc. Alternative Loan Trust 2005-58 Mortgage  
10 Pass Through Certificates Series 2005-58, as Assignee. However, it has been  
11 established that MERS holds no interest in any Note, Mortgage or Security Deed, and  
12 cannot assign that which it does not hold. Therefore, said transaction was and is  
13 illusory and of no legal force or effect.  
14

15           113. The signers of the MERS assignment were and are MERS  
16 Certifying Officers. The standard Resolution Appointing a MERS Certifying Officer  
17 gives them authority to "assign the lien of any mortgage loan naming MERS as the  
18 mortgagee, if the mortgage loan if the mortgage loan is registered on the MERS  
19 system. The signers have exercised this authority in favor of The Bank of New York  
20 as Trustee for the Certificateholders CWALT, Inc. Alternative Loan Trust 2005-58  
21 Mortgage Pass-Through Certificates Series 20065-58, not in its individual capacity  
22 but solely as certificate trustee in trust for registered holders of the Trust Series 2006-  
23 8T1.  
24  
25

26  
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1           114. Assigning the full beneficial interest of a security instrument is not  
2 a servicing obligation. This can only be done by a party holding the full beneficial  
3 interest, which can only be the certificate holders. Neither the mortgage servicers nor  
4 MERS holds any ownership interest in Plaintiffs' loan. Mortgage Servicers cannot  
5 perform acts reserved to owners.  
6

7           115. The true successors in interest to the Lender are investors whose  
8 authority has been so circumscribed and marginalized they do not even have the right  
9 to discover what actions are taken concerning loans which they own.  
10

11           116. If a mortgage servicer were to first consult with the Lender's true  
12 successors in interest, consisting of enough investors to collectively own more than  
13 50% of the debt, they would have to make hundreds of telephone calls and then they  
14 would be talking to people with little knowledge of this business. The task of making  
15 hundreds of telephone calls is not just bizarre, it would be unthinkable.           117.

16           Calling Depository Trust, which is the owner of record for all issued securities, would  
17 not satisfy this approval requirement. Depository Trust is not listed in the local  
18 recorder's office. It holds no recorded ownership interest in any of these mortgages.  
19 Secondly, Depository Trust has nothing to gain or lose from the outcome and nothing  
20 invested.  
21

22           118. MERS Certifying Officers and person signing on behalf of mortgage  
23 servicers get their instructions from the mortgage servicers that write their paycheck,  
24 and the ladder of authority stops there. All of the decisions are made without  
25

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1 consulting the Lender's successor, the certificate holders, for one very good reason.  
2 There is no functioning lender. Decisions made by Certifying Officers are all null and  
3 void for lack of authority.  
4

5 119. Pursuant to U.C.C. 3-308 (a), Petitioners challenge the authenticity  
6 and legitimacy of the signatories of the Assignments of Mortgage and the authenticity  
7 and legitimacy of them to effect any change or transfer of the beneficial ownership of  
8 Petitioners' security deed.

9 120. The Statute of Frauds invalidate these Assignment of Mortgage  
10 (Security Deed). The Statute of Frauds requires (1) a writing relinquishing the last  
11 recorded owner's interest in the security instrument ; and (2) this writing must be  
12 signed by an authorized officer of the owner. When formalities for the statute of  
13 frauds are followed, the new owner acquires the original lender's contractual  
14 relationship with the borrower. This is a borrower approved interest in land.  
15 Foreclosure statutes require the acquisition of the borrower approved interest in land  
16 as a pre-requisite for asserting the statutory power of sale. If this borrower approved  
17 interest in land is not acquired, foreclosure cannot be pursued.  
18

19 121. Defendants never acquired the borrower's approved interest in land,  
20 because the formalities of the statute of frauds were never followed. There is not even  
21 a signature on the Security Deed confirming a relationship between the original  
22 lender and Defendant. As a result, Defendants have not acquired the original lender's  
23  
24  
25  
26

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1 contractual relationship with the borrower and the borrower approved interest in  
2 land. Respondents cannot convey an interest that they never acquired.

3           122. U.C.C. 3-203 addresses the transfer of a bearer instrument by a  
4 person other than its issuer for the purpose of giving another person the right to  
5 enforce its terms. This statute is relevant because Plaintiffs' Note and Security Deed  
6 are bearer instruments. Every assignment is a prelude to enforcement.

7           123. U.C.C. 3-203 (b) dictates what must take place when a bearer  
8 instrument is transferred for the purpose of enforcement and states in relevant part:  
9 (b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in  
10 the transferee any right of the transferor to enforce the instrument, including any  
11 right as a holder in due course.

12           124. Pursuant to paragraph (b) of U.C.C.3-203, ownership rights in land  
13 are also subject to principals of property law independent of Article 3 of the Uniform  
14 Commercial Code. Because of special safeguards in the form of recording statutes,  
15 the owner of an interest in land must prove rightful possession. This means that an  
16 assignor must prove that their prior holder was endowed with the full beneficial  
17 interest. Official comment 2 for U.C.S.3-203 (b) explains how this works. "Because  
18 the transferee's rights are derivative of the transferor's right's *those rights must be*  
19 *proved...*The instrument, by its terms, is not payable to the transferee and the  
20 transferee must account for possession of the unendorsed instrument *by proving the*  
21 *transaction through which the transferee acquired it.*"In an action with respect to an  
22

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COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF

1 instrument, the authenticity of, and authority to make, *each signature on the*  
2 *instrument is admitted unless specifically denied in the pleadings.* If the validity of a  
3 signature is denied in the pleadings, the burden of establishing validity is on the  
4 person claiming validity, but the signature is presumed to be authentic and  
5 authorized unless the action is to enforce the liability of the purported signer and the  
6 signer is dead or incompetent at the time of trial of the issue of validity of the  
7 signature. If an action to enforce the instrument is brought against a person as the  
8 undisclosed principal of a person who signed the instrument as a party to the  
9 instrument, the plaintiff has the burden of establishing that the defendant is liable  
10 on the instrument as a represented person under subdivision (a) of Section 3402. If  
11 the validity of signatures is admitted or proved and there is compliance with  
12 subdivision (a), a plaintiff producing the instrument is entitled to payment if the  
13 plaintiff producing the instrument is entitled to payment if the plaintiff proves  
14 entitlement to enforce the instrument under Section 3301, unless the defendant  
15 proves a defense or claim in recoupment. If a defense or claim in recoupment is proved,  
16 the right to payment of the plaintiff is subject to the defense or claim, except to the  
17 extent the plaintiff proves that the plaintiff has rights of a holder in due course which  
18 are not subject to the defense or claim. 125. Restatement (Third) of

19 Property, Mortgages § 5-4 (c) "a mortgage may be enforced *only by, or on behalf of,* a  
20 person who is entitled to enforce the obligation the mortgage secures. The  
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COMPLAINT FOR QUIET TITLE AND  
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1 Restatement is considered authoritative because it is compiled by experts. Cases  
2 frequently cite restatement provisions as authority to support their rulings.

3           126. By stipulating for an *unendorsed instrument*, a seller must *prove*  
4 *the transaction through which it was acquired*, this Comment is specifically referring  
5 to the *contractual relationship with the borrower* and the *borrower approved interest*  
6 *in land* is bundled and inextricably intertwined with that contractual relationship.  
7 This comment is also referencing proof that the original holder of this contractual  
8 relationship has *relinquished this contractual interest* in the seller's favor. These  
9 terms are all direct references to the statute of frauds.  
10

11           127. U.C.C. 3-203 (d) sets forth the rule of law that if anything less than  
12 the entire beneficial interest is conveyed; the transferee can receive no greater  
13 interest than that which was held by the transferor. This rule of law applies to the  
14 assignments referenced in this Complaint. The true holder of this ownership interest  
15 in land cannot be ascertained from terms in this assignment. If the holder of a  
16 beneficial interest cannot be established, the interest being conveyed is also illusory  
17 and inadequate for enforcement.  
18

19           128. In addition Defendants are barred by their membership rules in  
20 MERS from acquiring any beneficial interest in its own name for a property posted  
21 on the MERS Registry.  
22

23           129. Defendants cannot prove that they hold rightful possession of the  
24 full beneficial interest in Defendants' instruments. Defendants cannot even prove  
25

26  
COMPLAINT FOR QUIET TITLE AND  
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1 that they hold any beneficial interest whatsoever in Plaintiffs' Note and Security  
2 Deed. Three problems are presented, and each can be independently fatal. (1) The  
3 full beneficial interest test imposed by U.C.C. 3-203 (b) and (d). (2) Its failure to follow  
4 formalities imposed by the statute of frauds subjects it to the deterrent in this law  
5 and renders the transfer invalid. (3) It has not specified the source of authority  
6 directing them to take this action.  
7

8 FIRST QUIET TITLE CLAIM

9 130. Plaintiff challenges the interest held by Defendants and Plaintiff  
10 maintains that the interest of these parties lacks authenticity in essence.  
11

12 131. The true beneficial owners of Petitioners' Property are investors,  
13 each holding a proportional and typically miniscule interest in Petitioners' Note and  
14 Security Deed. The only parties with something to gain or lose from the outcome of  
15 Plaintiffs' loan are those investors. Investors are exclusively entitled to Plaintiffs'  
16 payments. Under the terms in the Note, these investors are the *Note Holder*, and  
17 they alone are entitled to accelerate payments and initiate foreclosure.  
18

19 132. Investors, John Does 1-500, are the *real parties in interest*.

20 133. Defendants are wrongfully attempting to assert authority reserved  
21 exclusively to the beneficial owner. Defendantss own no interest whatsoever in  
22 Petitioners' lien or note. Defendants do not represent the Investors. Defendants are  
23 not entitled to Plaintiffs' payments. Defendants have nothing to benefit or lose.  
24  
25  
26

COMPLAINT FOR QUIET TITLE AND  
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1           134. The fact that Plaintiff cannot keep pace with the escalating rate of  
2 interest on the Note does not make Petitioner an outlaw subject to having her home  
3 seized by Respondents or by any bank or entity acting in the name of Defendants. To  
4 pursue foreclosure, respondents must follow the law dictated by their foundational  
5 documents. No party can stand above the law, not even these Defendants.  
6

7           135. Accordingly, named Defendants acquired nothing from MERS or  
8 any other assignor because MERS and these Defendants did not hold the full  
9 beneficial interest or any beneficial interest in Plaintiffs' Property. The parties that  
10 do hold this full beneficial interest are investors of CWALT Alternative Loan Trust  
11 2005-58. These parties are not disclosed. In this quiet title action, Plaintiff seeks  
12 Declaratory Relief in the form of a ruling stipulating that these Investors are the true  
13 beneficial owners of Plaintiff's title and, before any foreclosure action can be brought,  
14 these Investors must be joined as indispensable parties and their interests must be  
15 recorded at the Fulton County Recorder's Office, like every other ownership interest  
16 in real property.  
17  
18

19                           **SECOND QUIET TITLE CLAIM**

20           136. Plaintiff challenges the interest held by the named Defendants and  
21 the validity of the assignments to the Defendant's assignees because the formalities  
22 of the statute of frauds and U.C.C. 3-203 were not satisfied.  
23

24           137. The terms of the security instrument state that MERS can only act  
25 on behalf of and as the nominee for the Lender or their successor or assigns.  
26

                          COMPLAINT FOR QUIET TITLE AND  
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1           138. The exercise of these powers cannot elude the net cast by the  
2 Statute of Frauds. No interest in land can pass without satisfying its formalities.

3           139. It is an irrefutable fact that this lender never signed a writing  
4 disposing of its interest in Plaintiffs' Property. The ownership interest in land is still  
5 parked with the last recorded beneficial owner and unless and until the statute of  
6 frauds is satisfied, foreclosure cannot be pursued.

7           140. The subject Assignments are invalid for two reasons. For failing to  
8 accommodate formalities in the statute of frauds, these transfers are ruled invalid  
9 because the deterrent attached to the statute of frauds declares all such transfers to  
10 be unenforceable. It also fails to transfer the full beneficial interest for a bearer  
11 instrument, thereby violating U.C.C. 3-203 (b) and (d).

12  
13  
14                   THIRD QUIET TITLE CLAIM

15           141. A cloud on a title has been described as an outstanding  
16 claim which appears to be valid on its face, but can be shown by extrinsic  
17 proof to be invalid.

18           142. On the dates of the Assignments Defendants filed said  
19 Assignments maintaining that assignee held a lien as beneficiary of  
20 Plaintiff's security instrument.

21           143. Extrinsic evidence retrieved from the U.S. Securities and  
22 Exchange Commission's search engine reveals transfers of beneficial  
23 ownership affecting Plaintiff's Property, all occurring prior to the dates of the  
24

25  
26                   COMPLAINT FOR QUIET TITLE AND  
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1 subject Assignments of Mortgage (Security Deed). This extrinsic evidence can  
2 all be found under the corporate filing of CWALT, Inc. Alternative Loan  
3 Trust 2005-58. None of these transfers of beneficial ownership were recorded.  
4 All of them qualified as recordable transactions.  
5

6 144. All of this extrinsic evidence qualifies as a fact *plausible on its face*  
7 for invalidating these Assignments. Each and every one of these facts also supports  
8 a cognizable legal theory for invalidating each assignment. These prior beneficial  
9 transfers are published by the federal government as official documents and their  
10 integrity and legitimacy cannot be reasonable disputed.  
11

12 145. The sole support for these assignments is a formulaic term in the  
13 Security Deed. Petitioners' extrinsic evidence is worth of belief and it supports a  
14 cognizable legal theory for repudiating this formulaic term.  
15

#### 16 FOURTH QUIET TITLE CLAIM

17 146. MERS holds only a ministerial interest in this transaction at  
18 most. Through legal trickery, as described throughout this Complaint, Defendants  
19 have attempted to maneuver a ministerial interest into the appearance of a full  
20 beneficial interest. To reach this end, it has engaged the fallacy that it is acting on  
21 behalf of the Lender's successor in interest. Defendants are actually acting upon  
22 instructions from the mortgage servicer. There is no functioning lender. Through  
23 legal trickery, Defendants are placing themselves in a position to exercise legal  
24 leverage that they have no authority whatsoever to exercise.  
25

#### 26 COMPLAINT FOR QUIET TITLE AND DECLARATORY AND INJUNCTIVE RELIEF

1           147. O.C.G.A. § 23-3-60 *et. seq.* provides that clouds against Petitioners'  
2 title can be removed through Quieting Title to the Petitioners' Property.

3           148. Plaintiff holds an equitable interest in Plaintiffs' Property by virtue  
4 of a Note and a Security Deed.  
5

6           149. The documents filed and recorded in the public records of Fulton  
7 County Georgia by the named Defendants constitute a cloud upon Plaintiffs' Property.

8           150. For purposes of the statute, the date of filing of this Complaint shall  
9 also serve as the date in which a determination is sought.  
10

11           151. Plaintiffs bring this Quiet Title action against these Defendants  
12 and requires that Defendants demonstrate how any transfer of the contractual  
13 relationship with the borrower, which includes the borrower approved interest in  
14 land, can take place without fulfilling statute of frauds formalities prior to the dates  
15 of the Assignments.

16           152. Plaintiff brings this action against these Defendants and asks these  
17 Defendants to demonstrate how each of them could be in a position to hold and convey  
18 the full beneficial interest in Plaintiffs' security instrument and Note when it had no  
19 ownership interest in the note, the statute of frauds had been ignored, and each  
20 Defendant could not prove the full beneficial transfer of ownership for this bearer  
21 instrument from its seller, as U.C.C. 2-203 requires.  
22

23           153. Plaintiff asks each named Defendant to prove that it is entitled to  
24 payments made by Plaintiff for its own use. Under terms in the Note, the only party  
25

26  
COMPLAINT FOR QUIET TITLE AND  
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1 with the right to enforce this obligation is the party entitled to payments for their  
2 own use.

3           154. Plaintiff concedes that a mortgage loan was signed and Plaintiff is  
4 indebted to the rightful owner of this lien. Plaintiff contends that the true owner is  
5 known but not identified and their names are not discoverable. Plaintiff asks this  
6 Court to use its Declaratory Judgment authority to expose those imposters by  
7 removing these clouds and false claims of ownership to Plaintiff's Security Deed and  
8 Note appearing in this chain of title at the Fulton County Recorder's Office by  
9 ordering the following relief.  
10

11                           FIFTH QUITE TITLE CLAIM

12           155. To "defeat" its competition, Countrywide expanded its already-loose  
13 Underwriting guidelines, and provided loans to virtually all prospective borrowers,  
14 regardless of risk. Indeed, the Company's Chief Risk Officer, John P. McMurray  
15 ("McMurray") authored an August 6, 2007 e-mail acknowledging that Countrywide  
16 "has long followed a guiding principles [sic] of 'matching' (products, guidelines,  
17 etc.) and no brokering." By matching the most aggressive (and least prudent)  
18 underwriting standards in the market, Countrywide assumed ultimately crippling  
19 credit risks. Despite this, Defendants falsely claimed in the Company's 2006 Form  
20 10-K, filed with the SEC on March 1, 2007 and explicitly incorporated into the  
21 Offering Memorandum, that Countrywide's pay-option ARMs were "prudently  
22 underwritten."  
23  
24  
25

26                           COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF



**SIXTH QUITE TITLE CLAIM**

(False Designation of Origin – 15 U.S.C § 1125(a)(1)(A)

156. Plaintiff incorporate by reference and realleges each and every allegation in paragraphs 1 through 156.

157. The above acts of Defendant constitute false designation of origin in violation of Section 43(a)(1) of the Lanham Act, 15 U.S.C. Section 1125(a)(1).

The above acts of Defendants, including use of the term “America’s Wholesale Lender” have in fact caused and are likely to continue to cause, confusion, or to cause mistake, or to deceive the Plaintiff to the true identity of Defendants, or at the very least as to the affiliation, connection, or association of Defendants or Defendants’ services or commercial activities.

158. Defendants unlawful conduct has been knowing, deliberate and willful.

159. Defendants have been and are likely to continue to be unjustly enriched by their unlawful conduct.

**SEVENTH QUITE TITLE CLAIM**

(Unlawful, Unfair and Fraudulent Bus. Practices – Ga. Bus. & Prof. Code § 1720)

160. Plaintiff incorporate by reference and reallege each and every allegation in paragraphs 1 through 159 as if fully set forth herein.

161. Defendants engaged in unlawful, unfair and fraudulent business acts and practices because they:

COMPLAINT FOR QUIET TITLE AND  
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1 a. Violation Georgia Penal Code Section 529 by impersonating a Corporation in  
2 the process of accepting service of legal papers, entering into settlement agreements  
3 and or consent judgments in state court purporting to be a Legal Corporation.

4 b. Defendants unlawful, unfair and fraudulent business acts and practices have  
5 caused Plaintiffs to lose money and property, and if not enjoined, will continue to  
6 cause Plaintiff to lose money and property.

7 c. Plaintiff cannot SELL HER HOME WITH THE WORDING OF AMERICA'S  
8 WHOLESALE LENDER IN HER SECURITY DEED.

9  
10 **EIGHTH QUITE TITLE CLAIM**

11  
12 **(Declaratory Relief)**

13 162. Plaintiff incorporate by reference and reallege each and every allegation  
14 in paragraphs 1 through 161 as if fully set forth herein.

15 163. An actual controversy has arisen and now exists between Plaintiffs and  
16 Defendants concerning Defendants' use of the name "America's Wholesale Lender  
17 Inc. on Plaintiff's Security Deed, because Plaintiff cannot sell her home

18  
19 **NINTH QUITE TITLE CAIM**

20 **(Cancellation of Instruments – Security Deed # 0001144326461005 Book 50135**  
21 **Page 399 and Assignment Dated June 01, 2011 from MERS to Bank of New York**  
22 **Mellon fka The Bank of New York)**

23 164. Plaintiff incorporate by reference and reallege each and every allegation  
24 in paragraphs 1 through 163 as if fully set forth herein.

25  
26 **COMPLAINT FOR QUIET TITLE AND  
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1 Defendants without any authority from the State of Georgia, Mortgage License,  
2 have recorded a fraudulent deed and assignments and reconveyances of liens  
3 against Plaintiff's property.  
4

5 165. By this action, Plaintiffs seek to cancel the instruments referenced in her  
6 Ninth claim.

7 **Prayer for Relief**

8 Pursuant to O.C.G.A. § 23-3-60 *et. seq.*, Petitioners respectfully ask  
9 this Court to issue a declaratory judgment finding that the interest of these  
10 Defendants in Plaintiff's Note and Security Deed was void and of no legal force.  
11

12 Pursuant to O.C.G.A § 23-3-60 *et. seq.* Plaintiff asks this Court to  
13 declare that each and every one of these Defendant should be disqualified from  
14 enforcing Plaintiff's Note and Security Deed and to order Defendants to summon the  
15 true owners consisting of holders of mortgage backed securities owning at least a  
16 majority interest in Plaintiff's Note and Security Deed.  
17

18 That this Courts' declaratory judgment should further address each  
19 and every one of the clouds upon Plaintiff's Property and order such legal and  
20 equitable relief as is necessary for removing these clouds.

21 Plaintiff further requests reimbursement of all expenses paid in  
22 connection with this legal proceeding, including court costs and reasonable  
23 attorney's fees.  
24

25  
26 **COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF**

1 Plaintiff further request any other relief in the form of specific  
2 performance and compensation warranted by evidence in the record and that the  
3 Court grant such other and further relief as the Court deems equitable, appropriate  
4 and just.  
5

6 **VERIFIED EMERGENCY EX PARTE MOTION FOR**  
7 **TEMPORARY INJUNCTIVE RELIEF AND MEMORANDUM OF POINTS**  
8 **AND AUTHORITIES IN SUPPORT THEREOF**  
9

10 Plaintiff Janet Hill, Pro Se, pursuant to Federal Rule of Civil  
11 Procedure 65, move this Honorable Court for the entry of a Temporary Restraining  
12 Order to enjoin and restrain all named Defendants from selling Plaintiff's property  
13 at a non-judicial foreclosure sale of the subject property, Plaintiff's home, and as  
14 grounds therefore would state as follows:  
15

16 85.155. Plaintiff has filed an action to Quiet Title to the property at 543 Auburn  
17 Avenue, Atlanta, GA 30312 ("subject property")  
18

19 156. Hereinafter, this address and legal description as well as all  
20 improvements thereon shall be known and referred to as Plaintiff's Property. Said  
21 action to Quiet Title to Petitioners property is presently pending before this Court.  
22

23 157. In her Quiet Title action Plaintiff alleges that named Defendants  
24 have no legal interest in and to their property and have no standing to foreclose or  
25

26 COMPLAINT FOR QUIET TITLE AND  
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1 sell the subject property at a non-judicial public auction sale of the property  
2 presently scheduled for the first Tuesday in June, 2014.  
3

4 158. It is within this Court's wide discretion to grant a request for a  
5 temporary restraining order and/or a preliminary injunction. *See Grand River Ent.*  
6 *Six Nations, Ltd. v. Pryor*, 481 F.3d 60 (2d Cir. 2007). Generally, in order to  
7 warrant a court's intervention in the form of injunctive relief, "[t]he party seeking  
8 the injunction must demonstrate (1) irreparable harm should the injunction not be  
9 granted, and (2) either (a) a likelihood of success on the merits, or (b) sufficiently  
10 serious questions going to the merits and a balance of hardships tipping decidedly  
11 toward the party seeking injunctive relief." *Resolution Trust Corp. v. Elman*, 949  
12 F.2d 624,626 (2d Cir. 1991); *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596  
13 F.2d 70, 72 (2d Cir. 1979); *Citibank v. Citytrust*, 756 F.2d 273 (2d Cir. 1985);  
14 *Virgin Enterprises, Ltd. v. Nawab*, 335 F.3d 141 (2d Cir. 2003).  
15  
16  
17

18 159. Plaintiff will suffer irreparable injury, the loss of her home to an  
19 illegal non-judicial sale of their property unless the Court grants their Emergency  
20 Ex Parte Motion for Temporary Restraining Order. Respondents seek to illegally  
21 foreclose and sell Petitioners property through a non-judicial auction sale without  
22 any legal justification and without any judicial oversight.  
23  
24  
25  
26

COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF

1           160. Plaintiff has a likelihood of success on the merits of her Quiet  
2 Title Complaint in that named Defendants have no legal interest in and to the  
3 subject property, which fact shall be established through her Quiet Title action.  
4

5           161. Plaintiff presents sufficiently serious questions going to the  
6 merits of their claim which outweigh and tip the balance of hardship in favor of  
7 Plaintiff.  
8

9           162. The granting of Plaintiff's Temporary Restraining Order is in the  
10 public interest to prevent Defendants and others from foreclosing on the homes of  
11 owners by non-judicial process without having the right to foreclose and sell the  
12 property in violation of the laws of the State of Georgia and of the United States.  
13

14           163. Plaintiff is entitled to emergency ex parte temporary injunctive  
15 relief by both Georgia state law and the law of the United States.  
16

17           164. A motion for emergency temporary declaratory and injunctive  
18 relief is sought pursuant to O.G.C.A. sec. 9-5-1 and sec. 9-5-3, and on an  
19 emergency basis without notice pursuant to O.G.C.A. sec. 9-11-65(b).  
20

21           165. O.C.G.A. sec. 9-5-1 provides that equity, by writ of injunction,  
22 may restrain any act of a private individual or corporation which is illegal or  
23 contrary to equity and good conscience and for which no adequate remedy is  
24 provided at law.  
25

26           COMPLAINT FOR QUIET TITLE AND  
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1 166. O.C.G.A. sec. 9-5-3 (b) provides that writs of injunction may be  
2 issued by courts to enjoin sales by sheriffs, at any time before a sale takes place, in  
3  
4 any proper case made by application for injunction.

5 167. Plaintiff owns and occupies certain real property in the city of  
6  
7 Atlanta, Fulton County, Georgia known as 543 Auburn Avenue, Atlanta, Georgia  
8 30312.

9 168. Plaintiff has no adequate remedy at law to redress the harm  
10  
11 complained of, and the sale of the Plaintiff's property, under the circumstances set  
12 forth herein, is contrary to equity and good conscience.

13 169. O.G.C.A. sec. 9-11-65(b)(1) and (2) provide that a temporary  
14  
15 restraining order may be granted without oral or written notice to the adverse party  
16  
17 if it clearly appears from the specific facts shown by verified complaint that  
18 immediate and irreparable injury, loss, or damage will result to the applicant before  
19 the adverse party or his attorney can be heard in opposition, and that the applicant  
20 or their attorney certifies in writing, the efforts, if any, which have been made to  
21 give the notice and the reasons supporting the party's claim that notice should not  
22 be required.  
23  
24  
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COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF

1           170. The specific facts set forth in this Verified Motion demonstrate  
2 that unless a temporary injunction against the foreclosure sale set for Tuesday, in  
3 June, 2014 is granted, that Plaintiff will suffer the irreparable injury, loss and  
4 damage of the loss of her home and eviction therefrom, and loss of all of her equity  
5 therein.  
6

7  
8           171. Under the circumstances where the foreclosure sale is set for less  
9 than fifteen (15) calendar days from the date of the filing of this Verified Motion,  
10 the irreparable loss to the Plaintiff will result before the Defendants may be heard  
11 in opposition to the relief requested herein if the emergency relief requested herein  
12 is not granted immediately.  
13

14           172. The requisite certification pursuant to O.G.C.A. sec. 9-11-65(b)  
15 (2) is set forth following the Verification of this Motion by Plaintiff.  
16

17           173. Under the circumstances of this case, where there is no harm to  
18 Defendants with the granting of the requested relief, no bond should be required as  
19 a prerequisite to the granting of the relief requested herein as there are no costs or  
20 other damages which could be contemplated on the part of Defendant with the  
21 granting of the requested relief.  
22

23  
24           174. Plaintiff requests that any requirement of a bond be waived in that  
25 Plaintiff is unable to obtain or afford a bond of any kind or type.  
26

COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF




1 175. Courts have long recognized that “[t]o satisfy the irreparable harm  
2 requirement, [p]laintiffs must demonstrate that absent a preliminary injunction they  
3 will suffer an injury that is neither remote nor speculative, but actual and  
4 imminent . . . .” *See Grand River*, 481 F.3d at 66 (internal citations omitted).  
5 Petitioners easily meet this standard.  
6

7  
8 176. The threatened loss of Plaintiff’s home constitutes irreparable  
9 injury.  
10

11 WHEREFORE, Petitioners respectfully request that this honorable  
12 Court immediately take jurisdiction of this matter and enter an Order granting  
13 temporary injunctive relief expressly precluding and cancelling the foreclosure sale  
14 presently scheduled for June 3, 2014 for the reasons set forth herein, and that the  
15 Court grant such other and further relief as the Court deems equitable, appropriate  
16 and just.  
17  
18

19 Respectfully submitted this 22<sup>nd</sup> day of May, 2014.  
20

21   
22 Janet Hill, Petitioner Pro Se  
23 543 Auburn Avenue  
24 Atlanta, GA 30312  
25 Phone: 404-861-6036  
26

COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF


STATE OF GEORGIA )  
:SS

FULTON COUNTY )

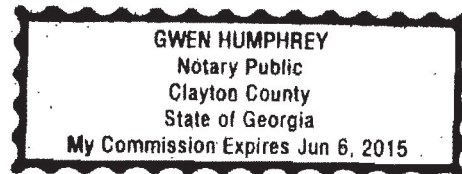
BEFORE ME the undersigned authority duly authorized to administer oaths personally appeared Janet Hill affiant, who, after being duly sworn, deposes and says that the facts and allegations contained in the foregoing Motion for Ex Parte Emergency Temporary Injunction are true and correct under penalty of perjury.

SWORN TO AND SUBSCRIBED this 22<sup>nd</sup> day of May, 2014

  
Janet Hill, Affiant

  
Notary Public, State of Georgia

My commission expires:



### CERTIFICATION

THE UNDERSIGNED HEREBY CERTIFIES that the undersigned, prior to the filing of this Verified Complaint, gave written notice by fax to

Shirley Morse Attorney for Defendants, by Facsimile at 770-941-2304 and further requested, by phone at 770-947-0240 that Defendant's attorney

COMPLAINT FOR QUIET TITLE AND  
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1 stipulate and agree to a postponement of the foreclosure sale pending for June 3,  
2 2014 and that no response to said written notice by facsimile or spoken request for  
3 a postponement of the foreclosure sale has been received through the date of this  
4 Certification.  
5

6 SO CERTIFIED BY PLAINTIFF JANET HILL this \_\_\_\_ day of May,  
7  
8 2014.

9  
10 \_\_\_\_\_  
Janet Hill, Plaintiff Pro Se  
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COMPLAINT FOR QUIET TITLE AND  
DECLARATORY AND INJUNCTIVE RELIEF

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JANET HILL,

Plaintiff,

v.

CIVIL ACTION FILE  
NO. 1:14-CV-1577-TWT

THE BANK OF NEW YORK  
MELLON as Trustee for the  
Certificateholders of Cwalt, Inc.  
alternative Loan Trust 2005-58  
Mortgage Pass-Through Certificate  
Series 2005-58  
formerly known as  
The Bank of New York, et al.,  
Defendants.

**ORDER**

This is the third lawsuit filed by the Plaintiff seeking to enjoin foreclosure proceedings. It is before the Court on the Plaintiff's ex parte Motion for a Temporary Restraining Order [Doc. 1]. For the reasons given by Judge Totenberg in Hill v. America's Wholesale Lender, Civil Action File No. 14-CV-882 (March 27, 2014), the Plaintiff is not entitled to the extraordinary relief of a temporary restraining order. The Plaintiff's ex parte Motion for a Temporary Restraining Order [Doc. 1] is DENIED.

SO ORDERED, this 27 day of May, 2014.

/s/Thomas W. Thrash  
THOMAS W. THRASH, JR.  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

JANET HILL,

Plaintiff,

v.

THE BANK OF NEW YORK  
MELLON as Trustee for the  
Certificateholders of Cwalt, Inc.  
alternative Loan Trust 2005-58  
Mortgage Pass-Through Certificate  
Series 2005-58  
formerly known as  
The Bank of New York, et al.,  
Defendants.

CIVIL ACTION FILE  
NO. 1:14-CV-1577-TWT

**ORDER**

This is the third lawsuit filed by the Plaintiff seeking to enjoin foreclosure proceedings. It is before the Court on the Defendants' Motions to Dismiss [Doc. 9, 10, & 11]. A complaint should be dismissed under Rule 12(b)(6) only where it appears that the facts alleged fail to state a "plausible" claim for relief. Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009); Fed. R. Civ. P. 12(b)(6). A complaint may survive a motion to dismiss for failure to state a claim, however, even if it is "improbable" that a plaintiff would be able to prove those facts; even if the possibility of recovery is



extremely “remote and unlikely.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 556 (2007) (citations and quotations omitted). In ruling on a motion to dismiss, the court must accept factual allegations as true and construe them in the light most favorable to the plaintiff. See Quality Foods de Centro America, S.A. v. Latin American Agribusiness Dev. Corp., S.A., 711 F.2d 989, 994-95 (11th Cir. 1983); see also Sanjuan v. American Bd. of Psychiatry and Neurology, Inc., 40 F.3d 247, 251 (7th Cir. 1994) (noting that at the pleading stage, the plaintiff “receives the benefit of imagination”). Generally, notice pleading is all that is required for a valid complaint. See Lombard’s, Inc. v. Prince Mfg., Inc., 753 F.2d 974, 975 (11th Cir. 1985), cert. denied, 474 U.S. 1082 (1986). Under notice pleading, the plaintiff need only give the defendant fair notice of the plaintiff’s claim and the grounds upon which it rests. See Erickson v. Pardus, 551 U.S. 89, 93 (2007) (citing Twombly, 550 U.S. at 555). This action is barred by res judicata. In addition, Plaintiff has not standing to challenge the assignment of her mortgage and her complaints about lending practices generally fail to state a plausible claim for relief. The Defendants’ Motions to Dismiss [Doc. 9, 10, & 11] are GRANTED.

SO ORDERED, this 6th day of August, 2014.

/s/Thomas W. Thrash  
THOMAS W. THRASH, JR.  
United States District Judge

**General Docket**  
**United States Court of Appeals for the Eleventh Circuit**

**Court of Appeals Docket #:** 14-14055  
**Nature of Suit:** 3290 Other Real Property Actions  
 Janet Hill v. The Bank of New York Mellon, et al  
**Appeal From:** Northern District of Georgia  
**Fee Status:** Fee Paid

**Docketed:** 09/09/2014  
**Termed:** 10/29/2014

**Case Type Information:**

- 1) Private Civil
- 2) Federal Question
- 3) -

**Originating Court Information:**

**District:** 113E-1 : 1:14-cv-01577-TWT  
**Civil Proceeding:** Thomas W. Thrash, Junior, Senior U.S. District Court Judge  
**Date Filed:** 05/23/2014  
**Date NOA Filed:**  
 09/03/2014

**Prior Cases:**

None

**Current Cases:**

None

JANET HILL

Plaintiff - Appellant

Janet Hill  
 [NTC Pro Se]  
 Firm: 404-861-6036  
 543 AUBURN AVE  
 ATLANTA, GA 30312

versus

THE BANK OF NEW YORK MELLON, as Trustee for the  
 Certificateholders of CWalt, Inc. alternative Loan Trust 2005-58  
 Mortgage Pass-Through Certificate Series 2005-58, f.k.a. The Bank of  
 New York

Defendant - Appellee

Jarrold Sean Mendel  
 Direct: 404-443-5713  
 [COR LD NTC Retained]  
 McGuireWoods, LLP  
 1230 PEACHTREE ST NE STE 2100  
 ATLANTA, GA 30309

KAREN PEETZ, President of Bank of New York Mellon

Defendant - Appellee

CURTIS Y. ARLEDGE, Vice Chairman and CEO Bank of New York  
 Mellon

Defendant - Appellee

THOMAS P. GIBBONS, Vice Chairman and Financial Officer Bank of  
 New York Mellon

Defendant - Appellee

CATHELENE TINE ROBINSON, Fulton County Clerk of Court,

Defendant - Appellee

Diana L. Freeman  
 [COR NTC Government]  
 Fulton County Attorney's Office  
 Firm: 404-730-7750  
 141 PRYOR ST SW STE 4038  
 ATLANTA, GA 30303

AMERICA'S WHOLESALE LENDER

Defendant - Appellee

Jarrold Sean Mendel  
 Direct: 404-443-5713  
 [COR LD NTC Retained]  
 (see above)

SECRETARY, STATE OF GEORGIA

Defendant - Appellee

Samuel Scott Olens  
 [COR NTC Government]  
 Attorney General's Office

8/30/2021

14-14055 Docket

Firm: 404-656-3300  
40 CAPITOL SQUARE SW  
ATLANTA, GA 30334

Daniel John Strowe  
[COR NTC Government]  
Attorney General's Office  
Firm: 404-656-3300  
40 CAPITOL SQUARE SW  
ATLANTA, GA 30334

8/30/2021

14-14055 Docket

JANET HILL,

Plaintiff - Appellant,










versus

THE BANK OF NEW YORK MELLON,  
as Trustee for the Certificateholders of CWalt, Inc.  
alternative Loan Trust 2005-58 Mortgage Pass-Through  
Certificate Series 2005-58, f.k.a. The Bank of New York,  
KAREN PEETZ,  
President of Bank of New York Mellon,  
CURTIS Y. ARLEDGE,  
Vice Chairman and CEO Bank of New York Mellon,  
THOMAS P. GIBBONS,  
Vice Chairman and Financial Officer Bank of New York Mellon,  
AMERICA'S WHOLESALE LENDER, et al.,

Defendants - Appellees.

8/30/2021

14-14055 Docket

09/09/2014	<input type="checkbox"/> 	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant Janet Hill on 09/03/2014. Fee Status: Fee Paid. No hearings to be transcribed. The appellants brief is due on or before 10/20/2014. The appendix is due no later than 7 days from the filing of the appellant's brief. Awaiting Appellant's CIP Due on 09/29/2014 as to Appellant Janet Hill [Entered: 09/11/2014 02:32 PM]
09/09/2014	<input type="checkbox"/> 	TRANSCRIPT INFORMATION form filed by Party Janet Hill. No transcript is required for appeal purposes. [Entered: 09/11/2014 02:35 PM]
09/24/2014	<input type="checkbox"/> 	APPEARANCE of Counsel Form filed by Jarrod Sean Mendel for The Bank of New York Mellon and America's Wholesale Lender. (ECF: Jarrod Mendel) [Entered: 09/24/2014 03:46 PM]
09/24/2014	<input type="checkbox"/> 	Certificate of Interested Persons and Corporate Disclosure Statement filed by Attorney Jarrod Sean Mendel for Appellees The Bank of New York Mellon and America's Wholesale Lender. On the same day the CIP is served, the party filing it must also complete the court's web-based stock ticker symbol certificate at the link here <a href="http://www.ca11.uscourts.gov/web-based-cip">http://www.ca11.uscourts.gov/web-based-cip</a> or on the court's website. See 11th Cir. R. 26.1-2(b). (ECF: Jarrod Mendel) [Entered: 09/24/2014 03:47 PM]
09/26/2014	<input type="checkbox"/>	E-filed Appearance of Counsel processed for Attorney Jarrod Sean Mendel for Appellee The Bank of New York Mellon in 14-14055, Attorney Jarrod Sean Mendel for Appellee America's Wholesale Lender in 14-14055. [Entered: 09/26/2014 01:02 PM]
10/16/2014	<input type="checkbox"/> 	JURISDICTIONAL QUESTION issued as to Janet Hill and America's Wholesale Lender, Curtis Y. Arledge, Thomas P. Gibbons, Karen Peetz, Cathelene Tine Robinson, Secretary, State of Georgia and The Bank of New York Mellon. [Entered: 10/16/2014 05:05 PM]
10/20/2014	<input type="checkbox"/> 	Appellant's brief filed by Janet Hill. Deficiencies: No Proof of Service, Missing 3 copies Pages need to be numbered consecutively, Arguments. Service date: 10/20/2014 [14-14055] Attorney for Appellee: Freeman - US mail; Attorney for Appellee: Mendel - email; Attorney for Appellee: Olens - US mail; Attorney for Appellee: Strowe - US mail. [Entered: 10/22/2014 03:12 PM]
10/22/2014	<input type="checkbox"/> 	Notice of deficient Appellant brief filed by Party Janet Hill. Deficiencies: No Proof of Service, Missing 4 copies, Pages need to be numbered consecutively, Arguments. [Entered: 10/22/2014 03:13 PM]
10/28/2014	<input type="checkbox"/> 	Response to Jurisdictional Question filed by Appellant Janet Hill. [Entered: 11/05/2014 09:04 AM]
10/29/2014	<input type="checkbox"/> 	ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R. 42-2(c), this appeal is DISMISSED for want of prosecution because the appellant Janet Hill failed to file an appendix within the time fixed by the rules [Entered: 10/29/2014 02:00 PM]



8/30/2021

14-14055 Docket

Clear All

☒ Documents and Docket Summary

☐ Documents Only

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**UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

John Ley  
Clerk of Court

For rules and forms visit  
[www.call.uscourts.gov](http://www.call.uscourts.gov)

October 29, 2014

James N. Hatten  
Richard B. Russell Bldg & US Courthouse  
75 SPRING ST SW  
STE 2211  
ATLANTA, GA 30303-3309

Appeal Number: 14-14055-FF  
Case Style: Janet Hill v. The Bank of New York Mellon, et al  
District Court Docket No: 1:14-cv-01577-TWT

The enclosed copy of the Clerk's Entry of Dismissal for failure to prosecute in the above referenced appeal is issued as the mandate of this court. See 11th Cir. R. 41-4. Pursuant to 11th Cir. R. 42-2(c) and 42-3(c), when an appellant fails to timely file or correct a brief or appendix, the appeal shall be treated as dismissed on the first business day following the due date. This appeal was treated as dismissed on 10/27/2014.

Counsel and pro se parties are advised that pursuant to Fed.R.App.P. 25(a)(2)(A), a motion to set aside the dismissal and remedy the default "is not timely unless the clerk receives the papers within the time fixed for filing."

Sincerely,

JOHN LEY, Clerk of Court

Reply to: Janet K. Mohler, FF  
Phone #: (404) 335-6178

Enclosure(s)

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 14-14055-FF

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JANET HILL,

Plaintiff - Appellant,

versus

THE BANK OF NEW YORK MELLON,  
as Trustee for the Certificateholders of CWalt, Inc.  
alternative Loan Trust 2005-58 Mortgage Pass-Through  
Certificate Series 2005-58, f.k.a. The Bank of New York,  
KAREN PEETZ,  
President of Bank of New York Mellon,  
CURTIS Y. ARLEDGE,  
Vice Chairman and CEO Bank of New York Mellon,  
THOMAS P. GIBBONS,  
Vice Chairman and Financial Officer Bank of New York Mellon,  
AMERICA'S WHOLESALE LENDER, et al.,

Defendants - Appellees.

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Appeal from the United States District Court  
for the Northern District of Georgia

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ENTRY OF DISMISSAL: Pursuant to the 11th Cir.R. 42-2(c), this appeal is DISMISSED for want of prosecution because the appellant Janet Hill failed to file an appendix within the time fixed by the rules, effective October 29, 2014.

JOHN LEY  
Clerk of Court of the United States Court  
of Appeals for the Eleventh Circuit

by: Janet K. Mohler, FF, Deputy Clerk

FOR THE COURT - BY DIRECTION